

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fenkel	Team: Squad #14	CCRB Case #: 201609123	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tue, 10/25/2016 6:44 PM	Location of Incident: [REDACTED]	Precinct: 90	18 Mo. SOL 04/25/2018	EO SOL 4/25/2018	
Date/Time CV Reported Tue, 10/25/2016 8:23 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/01/2016 11:13 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Theohari Koumniotes	4591	[REDACTED]	090 PCT
2. POM Stephen Loffredo	02241	[REDACTED]	090 PCT
3. POM Philippe Vukosa	22128	[REDACTED]	090 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Wegens Desiste	20235	[REDACTED]	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A. POM Philippe Vukosa	Force: Police Officer Philippe Vukosa used a chokehold against § 87(2)(b) [REDACTED]	[REDACTED]
B. POM Stephen Loffredo	Force: Police Officer Stephen Loffredo used a chokehold against § 87(2)(b) [REDACTED]	[REDACTED]
C. POM Stephen Loffredo	Force: Police Officer Stephen Loffredo restricted § 87(2)(b) [REDACTED]'s breathing.	[REDACTED]
D. SGT Theohari Koumniotes	Force: Sergeant Theohari Koumniotes used a Taser against § 87(2)(b) [REDACTED]	[REDACTED]
E. POM Stephen Loffredo	Force: Police Officer Stephen Loffredo used pepper spray against § 87(2)(b) [REDACTED]	[REDACTED]
F. POM Stephen Loffredo	Force: Police Officer Stephen Loffredo used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
G. SGT Theohari Koumniotes	Discourtesy: Sergeant Theohari Koumniotes spoke discourteously to an individual.	[REDACTED]
H. SGT Theohari Koumniotes	Abuse of Authority: Sergeant Theohari Koumniotes interfered with an individual's use of a recording device.	[REDACTED]

Case Summary

On October 25, 2016 Sgt. Theohari Koumniotes of the 90th Precinct contacted the IAB Command Center and reported that § 87(2)(b) was taken to § 87(2)(b) regarding injuries sustained during his arrest (Board Review 01). This complaint was received at the CCRB on November 1, 2016.

On October 25, 2016 at approximately 6:44 p.m., in the area of § 87(2)(b) § 87(2)(b) in Brooklyn, PO Wegens Desiste and PO Philippe Vukosa of the 90th Precinct approached § 87(2)(b) § 87(2)(b) to arrest him for assault. PO Vukosa and PO Desiste asked § 87(2)(b) to stop and come with them, and § 87(2)(b) refused. PO Desiste and PO Vukosa radioed for assistance, and Sgt. Koumniotes and PO Stephen Loffredo of the 90th Precinct arrived at the location within seconds.

PO Vukosa wrapped his forearm around § 87(2)(b)'s neck, and brought him to the ground (**Allegation A**). On the ground, PO Loffredo grabbed the front of § 87(2)(b)'s neck with his hand, and applied pressure which restricted § 87(2)(b)'s breathing (**Allegation B, Allegation C**). Subsequently, Sgt. Koumniotes used a Taser against § 87(2)(b) (**Allegation D**). Despite the use of the Taser, § 87(2)(b) got up from the ground and began to walk down the street away from the officers. § 87(2)(b) was pepper sprayed and brought to the ground a second time by PO Loffredo (**Allegation E, Allegation F**).

§ 87(2)(b) was ultimately handcuffed after he was brought to the ground a second time. As the officers secured § 87(2)(b) Sgt. Koumniotes directed his attention towards bystanders, some of whom yelled profanities while recording the incident on their cell phones. Sgt. Koumniotes yelled to an unidentified individual, "What are you going to do? I'm right here. Do it. You talk a big game when I turn around. Do it" and allegedly ordered an individual known only as § 87(2)(b) to stop recording (**Allegation G, Allegation H**).

§ 87(2)(b) was arrested and charged with assault (Board Review 02) and on November 3, 2016 § 87(2)(b) pled guilty to disorderly conduct and received a conditional discharge (Board Review 03).

§ 87(2)(b) provided the CCRB with two cell phone videos of the incident, one of which was recorded by § 87(2)(b) and the other was recorded by an unknown individual. SnagIt copies of the footage have been placed below (Board Review 04)(Board Review 05). The original video footage is located in IA #38 and IA #39 of the digital case file (Board Review 06)(Board Review 07) and summarized in IA #56 (Board Review 08).



201609123_20170203_0947_DM.mp4



201609123_20170203_0931_DM.mp4

This case was submitted for closure 20 days past the 90 day benchmark due to the case involving multiple substantiated allegations.

An attorney was consulted regarding the force and discourtesy allegations in this case.

Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)'s arrest without a desk appearance ticket, this case was unsuitable for mediation.
- As of February 9, 2017 a Notice of Claim has not been filed with the NYC Comptroller's Office regarding this incident (Board Review 09).

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Board Review 10).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 11).
- Sgt. Koumniotes has been a member of the service for eight years and has had 12 prior CCRB complaints involving 27 allegations, none of which were substantiated. In case 201000737, a discourtesy allegation against him was unfounded. § 87(2)(g) [REDACTED]
- PO Loffredo has been a member of the service for six years and has had four prior CCRB involving 10 allegations. In CCRB case 201401621, a stop, frisk, and search allegation were substantiated. The CCRB recommended command discipline A, and the NYPD imposed command level instructions. In case 201504251, two force allegations against him were exonerated. § 87(2)(g) [REDACTED]
PO Vukosa has been a member of the service for 4 years and has had one prior CCRB complaint, case 201504988, involving three allegations, none of which were substantiated. In that case, a force allegation against him was closed as complainant uncooperative.

Potential Issues

§ 87(2)(b) [REDACTED] refused to provide full names and contact information for witnesses to the incident and stated he did not know who recorded one of the cell phone videos he provided to the CCRB. § 87(2)(b) [REDACTED] provided only one full legal name for one of his witnesses, § 87(2)(b) [REDACTED]. A Lexis Nexis search for § 87(2)(b) [REDACTED] yielded over 3,000 results and without any additional identification information, it is impossible to know which, if any, were the § 87(2)(b) [REDACTED] who witnessed this incident. § 87(2)(b) [REDACTED] appeared at the CCRB with his nephew, known only as § 87(2)(b) [REDACTED] identified himself as a witness to the incident, but refused to provide his full name and refused to provide any testimony for the investigation. Similarly, § 87(2)(b) [REDACTED] identified one of the other victims in the case only by the nickname § 87(2)(b) [REDACTED]. Without more information, this individual could not be identified or contacted.

Findings and Recommendations

Allegation A – Force: Police Officer Philippe Vukosa used a chokehold against § 87(2)(b) [REDACTED]

§ 87(2)(b) [REDACTED] testified that as he walked down the street, PO Desiste told him to “stop” and grabbed his left hand. § 87(2)(b) [REDACTED] walked approximately steps away from the officers, and PO Vukosa allegedly grabbed onto § 87(2)(b) [REDACTED]’s hoodie and pulled § 87(2)(b) [REDACTED] to the ground.

PO Vukosa (Board Review 13) initially testified that upon observing § 87(2)(b) [REDACTED] PO Desiste approached him and informed him that he needed to come with the officers and was

under arrest. § 87(2)(b) immediately stated, “No.” PO Vukosa and PO Desiste each attempted to grab one of § 87(2)(b) s arms and pull them behind his back, but § 87(2)(b) pulled his arms away and jerked his body from side to side. PO Vukosa wrapped his arms around § 87(2)(b) s waist with his chest against § 87(2)(b) s back, and pulled § 87(2)(b) down to the ground.

§ 87(2)(g) Video footage depicts that PO Vukosa stood behind § 87(2)(b) and wrapped his forearm arm across § 87(2)(b) s neck and pulled him to the ground. A SnagIt of relevant video footage has been placed below (Board Review 14).



201609123_20170207_1629_DM.mp4

Upon viewing the video footage, PO Vukosa testified that he was depicted utilizing a “seatbelt hold” and that in the depicted take down he momentarily applied a sideways pressure to § 87(2)(b) s carotid artery.

PO Desiste (Board Review 15), PO Loffredo (Board Review 16), and Sgt. Koumniotes (Board Review 17) each corroborated PO Vukosa’s account of § 87(2)(b) s initial resistance which led to § 87(2)(b) being brought to the ground. PO Desiste, PO Loffredo, and Sgt. Koumniotes testified that despite ordered to give the officers his arms, § 87(2)(b) refused and evaded the officers’ grasps by stiffening his arms against his sides, and pulling them in front of his chest.

§ 87(2)(g)

According to NYPD Patrol Guide, Procedure 221-01 (Board Review 18), officers will only use the reasonable force necessary to gain control or custody of a subject. Furthermore, the use of chokeholds, the definition of which includes but is not limited to any pressure to the throat or windpipe which may prevent or hinder breathing, or reduce air intake, is prohibited.

§ 87(2)(g)

Allegation B – Force: Police Officer Stephen Loffredo used a chokehold against § 87(2)(b)

Allegation C – Force: Police Officer Stephen Loffredo restricted § 87(2)(b) s breathing.

§ 87(2)(b) testified that after he was brought to the ground, a white male officer, he could not distinguish who, allegedly grabbed the front of his neck, with four fingers on one side and their thumb on the opposite side. § 87(2)(b) approximated that the officer applied pressure to his neck which restricted his breathing for approximately five to 10 minutes.

In his medical records from § 87(2)(b), § 87(2)(b) complained that his body ached, specifically his back and knee. § 87(2)(b) informed medical personnel that he was

pepper sprayed and had a Taser used against him, but he made no statements regarding additional physical force or difficulty breathing (Board Review 19).

Video footage depicts that PO Loffredo's hand made contact with § 87(2)(b)'s neck for at least 8 seconds after he was brought to the ground. A SnagIt of the relevant footage has been placed below (Board Review 20).



201609123_20170207_1644_DM.mp4

Upon viewing the aforementioned video footage, PO Loffredo testified that he was depicted holding onto § 87(2)(b)'s clothing between his shoulder and his neck. PO Loffredo denied that he applied any pressure to § 87(2)(b)'s neck, and testified that if he did apply pressure, it would have been on § 87(2)(b)'s shoulder.

In their CCRB interviews, Sgt. Koumniotes, PO Desiste, and PO Vukosa denied seeing PO Loffredo grab § 87(2)(b)'s neck as alleged.

§ 87(2)(g)

Video footage depicts PO Loffredo's hand at § 87(2)(b)'s neck, and although the officer said he was only grabbing § 87(2)(b)'s clothing, this is not readily apparent in the video footage.

As discussed, NYPD Patrol Guide, Procedure 221-01 (Board Review 18) specifically prohibits the use of chokeholds, the definition of which includes but is not limited to any pressure to the throat or windpipe which may prevent or hinder breathing, or reduce air intake.

§ 87(2)(g)

Allegation D – Force: Sergeant Theohari Koumniotes used a Taser against § 87(2)(b)

Allegation E – Force: Police Officer Stephen Loffredo used pepper spray against § 87(2)(b)

Allegation F – Force: Police Officer Stephen Loffredo used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was Tasered by Sgt. Koumniotes, pepper sprayed by PO Loffredo, and brought to the ground by PO Loffredo.

§ 87(2)(b) testified that after he was initially brought to the ground by PO Vukosa, he attempted to lift his head up to improve his breathing. § 87(2)(b) was subsequently tasered by Sgt. Koumniotes, and pepper sprayed by PO Loffredo.

Sgt. Koumniotes testified that after § 87(2)(b) was brought to the ground, PO Desiste, PO Vukosa, and PO Loffredo attempted to grab his arms, but § 87(2)(b) moved his arms away. Sgt. Koumniotes yelled out “Taser” and deployed his Taser in cartridge mode on § 87(2)(b). Sgt. Koumniotes testified that using his Taser was necessary due to § 87(2)(b)'s continued resistance. Sgt. Koumniotes testified that one dart immediately fell from § 87(2)(b) and the other dart appeared to hang from the middle of his back. As such, it had no effect. § 87(2)(b) got up from the ground, and began to walk down § 87(2)(b). PO Loffredo pursued § 87(2)(b) and pepper sprayed him in the face. The pepper spray caused

§ 87(2)(b) to momentarily slow down, however, he continued to resist attempts to grab his arms by twisting his body away from the officers and crossing his arms in front of his chest. § 87(2)(b) was then brought to the ground again.

PO Loffredo testified that after § 87(2)(b) was initially brought to the ground, he attempted to break away from the officers and stand up. § 87(2)(b) also pulled his arms in front of his body to prevent them from being grabbed. Sgt. Koumnitoes deployed his Taser, however, the prongs did not appear to penetrate § 87(2)(b)'s skin and § 87(2)(b) stood up and attempted to remove the prongs from his clothing. PO Loffredo then pepper sprayed § 87(2)(b) causing him to momentarily pause. However, § 87(2)(b) continued walking down the street and was ultimately brought to the ground by PO Loffredo. PO Loffredo testified that bringing § 87(2)(b) to the ground was necessary due to his attempt to flee.

Both PO Vukosa and PO Desiste corroborated that § 87(2)(b) was resistant by refusing to give the officers his arms, and that the Taser did not appear to have any effect on § 87(2)(b) as he was able to walk down the street. PO Vukosa was unable to recall which officer brought § 87(2)(b) to the ground for a second time, and could not describe this action in more detail. PO Desiste testified that after § 87(2)(b) was tasered and pepper sprayed, he grabbed onto § 87(2)(b)'s jacket. In response, § 87(2)(b) backed up and was subsequently brought to the ground by PO Loffredo.

Video footage depicts that officers were unable to grab § 87(2)(b)'s arms after he was brought to the ground. § 87(2)(b) is shown lying on his back with his arms crossed in front of his chest, and § 87(2)(b) momentarily lifts his body off the ground in the seconds prior to being tasered. The officers can be heard speaking to § 87(2)(b) though it is not possible to make out what is being said. After Sgt. Koumnitoes discharges the Taser, § 87(2)(b) gets up from the ground. § 87(2)(b) is verbally ordered to put his hands behind his back, though he does not and remains standing, at which point he is pepper sprayed by PO Loffredo. § 87(2)(b) then walks approximately 10 feet down the street before PO Desiste, PO Vukosa, and PO Desiste reach him. PO Desiste and PO Loffredo grab onto § 87(2)(b)'s arms and clothing, however, § 87(2)(b) holds his arms against his sides until he is brought to the ground by PO Loffredo. A SnagIt of the relevant footage has been placed below (Board Review 21).



201609123_20170208_1639_DM.mp4

TRI Reports prepared by Sgt. Koumnitoes (Board Review 22) and PO Loffredo (Board Review 23) indicate that § 87(2)(b) was tasered, pepper sprayed, and forcibly brought to the ground. The TRI reports indicate that this force was used in defense of themselves and other officers, and to overcome § 87(2)(b)'s resistance, described as wrestling, grappling, foot striking, and pushing.

According to NYPD Patrol Guide, Procedure 221-02, officers may use reasonable force under the circumstances to gain control of a person who is resisting (Board Review 24).

According to Patrol Guide Procedure 221-08 (Board Review 25), a conducted electrical weapon should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present.

According to Patrol Guide Procedure 221-07, an officer may use pepper spray when it is reasonably necessary to gain or maintain control of someone who is actively resisting arrest (Board Review 26).

Patrol Guide Procedure 221-08 defines active resisting to include physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

§ 87(2)(g) Not only did he ignore verbal commands to provide his hands, he resisted arrest for an extended period of time, during which he tensed his arms, braced his arms in front of his chest, stood up from the ground and attempted to get away from the officers by walking down the street.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation G – Force: Sergeant Theohari Koumniotes spoke discourteously to an individual.

Video footage depicts Sgt. Koumniotes order an unidentified individual recording on a cell phone to back up approximately three times. Despite these orders, the individual remains within the general vicinity of the officers. Sgt. Koumniotes briefly walks away toward § 87(2)(b) who is handcuffed and seated upright on the ground. Bystanders can be heard yelling at Sgt. Koumniotes stating, “Do something nigger”, “get the fuck out of here”, and “I’m ready to spank one of ya’ll.” Sgt. Koumniotes then approached the unidentified bystander again and yelled, “What are you going to do? I’m right here. Do it. You talk a big game when I turn around. Do it.” A clip edited SnagIt of the relevant footage has been placed below (Board Review 27).



201609123_20170209_1041_DM.mp4

Sgt. Koumniotes testified that a group of approximately 10 to 20 bystanders, some of whom recorded on their cell phones, gathered approximately five feet behind the officers. One of the individuals called Sgt. Koumniotes a “pussy.” Sgt. Koumniotes yelled for the group to get back approximately three to four times because they came closer, approximately two feet from the officers. Sgt. Koumniotes noted he was particularly concerned because PO Loffredo, PO Desiste, and PO Vukosa had their backs toward the bystanders. Sgt. Koumniotes acknowledged that he asked the individual who called him a “pussy” if he “wanted to do something about it.”

PO Loffredo and PO Desiste each acknowledged the presence of bystanders observing the incident and corroborated that bystanders were ordered to “get back” and “back up.” PO Loffredo approximated the size of the crowd as eight, whereas PO Desiste approximated the crowd as five. PO Vukosa was unable to recall any interaction between Sgt. Koumniotes and the bystanders.

According to NYPD Patrol Guide, Procedure 203-09, an officer must be courteous and respectful while interacting with the public (Board Review 28).

§ 87(2)(g)
[REDACTED]
[REDACTED]

§ 87(2)(g)

Allegation H – Abuse of Authority: Sergeant Theohari Koumniotes interfered with an individual’s use of a recording device.

§ 87(2)(b) alleged that Sgt. Koumniotes told his friend § 87(2)(b) not to record the incident on his cell phone. § 87(2)(b) testified that despite his limited English proficiency § 87(2)(b) required a translator for his CCRB interview), he was able to understand that Sgt. Koumniotes stated “no recording.”

As discussed in Potential Issues, the CCRB was unable to identify or establish contact with § 87(2)(b)’s video footage, provided to the CCRB by § 87(2)(b) depicted Sgt. Koumniotes issuing multiple orders for another unidentified individual to move back. Based on the video footage, Sgt. Koumniotes did not appear to have any direct interaction with § 87(2)(b) and did not tell the other individual not to record.

Sgt. Koumniotes denied that he told any bystanders not to record, and denied that he had any other intention beyond protecting the officer’s safety when he ordered the bystanders to back up. PO Loffredo and PO Desiste corroborated this, and denied that Sgt. Koumniotes instructed any bystanders not to record. PO Vukosa was unable to recall this portion of the incident.

§ 87(2)(g)

Squad: #14

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date